

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TRAVIS JAMES JONES,

Defendant-Appellant.

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UNPUBLISHED

August 10, 2004

No. 246818

Wayne Circuit Court

LC No. 02-010614-01

Before: Hoekstra, P.J., and Cooper and Kelly, JJ.

PER CURIAM.

Defendant Travis James Jones appeals as of right convictions by jury of first-degree criminal sexual conduct (CSC I), MCL 750.520b, second-degree criminal sexual conduct (CSC II), MCL 750.520c, assault with a dangerous weapon, MCL 750.82, and resisting and obstructing a police officer, MCL 750.479. The trial court sentenced defendant as a third-offense habitual offender, MCL 769.11, to concurrent terms of imprisonment of fifteen to thirty years for the CSC I conviction, five to fifteen years for the CSC II conviction, two to four years each for assault with a dangerous weapon and resisting and opposing a police officer. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In this case, defendant was alleged to have lured the sexual assaults victim, who met defendant through a telephone dating service, to a house in Detroit that was rented to defendant's friend's girlfriend, where defendant forcibly engaged in sexual penetration of the victim and fondled her breasts while armed with a knife. After securing her release, the victim reported the incident to police, described her attacker, and identified for the police the incident location.

Shortly after learning of the incident location, police officers went to the area, parking several houses away, and proceeded to the location on foot. As the police approached, defendant ran from the front lawn and into the house, slamming the door. The officers pursued defendant, forced open the front door, and observed defendant enter a bedroom and close the door. Again officers forced open the door and were confronted by defendant, who had his arm raised and was holding a screwdriver in his hand. After a brief struggle in which defendant's eyebrow was lacerated, the police subdued defendant and placed him under arrest.

On appeal, defendant first argues that the prosecution failed to establish that his arrest was legal and, consequently, that his convictions of assault and resisting and opposing must be

reversed. Specifically, defendant argues that the forced entry into the residence by police without a warrant to effectuate his arrest was illegal. We disagree.

Initially, we find defendant's argument unavailing because defendant lacks standing to challenge the forced entry. *People v Parker*, 230 Mich App 337, 339-341; 584 NW2d 336 (1998) ("For a defendant to attack the propriety of a search and seizure, the search must have infringed a constitutionally protected interest." A mere visitor does not have an expectation of privacy sufficient to support standing to challenge a police entry of a residence.). Here, defendant did not reside in the residence to which he fled. Moreover, because the police had probable cause to believe that defendant had committed a serious assaultive felony while armed with a knife and were pursuing him as he fled, they could enter the residence under the warrant exception for "hot pursuit." *People v Cartwright*, 454 Mich 550, 558-559; 563 NW2d 208 (1997).

Next, defendant argues that two of the prosecutor's arguments to the jury denied him due process and a fair trial. We review claims of prosecutorial misconduct de novo on a case by case basis by examining the record and evaluating the prosecutor's remarks in context to determine whether the defendant was denied a fair and impartial trial. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995); *People v Thomas*, 260 Mich App 450, 453-454; 678 NW2d 631 (2004).

Defendant argues that the prosecutor suggested to the jury that defense counsel is free to lie to the jury and has no obligation to tell the truth. We disagree. A prosecutor may not attack the credibility of the defense counsel, *People v Kennebrew*, 220 Mich App 601, 607; 560 NW2d 354 (1996), or suggest that defense counsel is intentionally attempting to mislead the jury, *People v Watson*, 245 Mich App 572, 592; 629 NW2d 411 (2001). Here, understood in context the argument the prosecutor was making in rebuttal was that regardless of what the lawyers, including defense counsel say, or how vehemently they argue, or how their positions on the evidence may change from opening statement to closing argument, the obligation of the jurors is to decide the case on the evidence presented. The challenged comments did not deny defendant a fair trial.

Defendant's other claim is more substantive. During her opening argument, the prosecutor speculated about what defendant possibly was thinking when he allowed the victim to leave. In so doing, the prosecutor stated that "Maybe [defendant] has gotten away with it before. Who knows. Maybe that's what his state of mind is." The suggestion that defendant previously had committed sexual assaults was not supported by the evidence and opened the door for the jury to speculate about whether defendant is a repeat sex-offender. Thus, we conclude that the prosecutor's suggestion that defendant may have committed other sexual assaults constituted improper argument.

However, this preserved,<sup>1</sup> nonconstitutional error is not grounds for reversal unless, after examination of the entire case, defendant affirmatively establishes that it is more probable than

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<sup>1</sup> Although no objection is noted in the record, defense counsel immediately requested a side-bar after the prosecutor made the remarks that are now challenged; however, there is no record of the  
(continued...)

not that the error was outcome determinative. *People v Lukity*, 460 Mich 484, 496; 596 NW2d 607 (1999); *People v Brownridge (On Remand)*, 237 Mich App 210, 216; 602 NW2d 584 (1999). Because the prosecutor's argument only speculated that defendant was involved in other assaults and was a very brief and isolated remark in an otherwise proper argument, we find that defendant has not established that the error was outcome determinative.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Jessica R. Cooper  
/s/ Kirsten Frank Kelly

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(...continued)

exchange that occurred during the side-bar. Given these circumstances, we presume that defense counsel objected to the prosecutor's remarks during the side-bar and thus we address the allegation of error as preserved.